

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0525
Utility Receipts Tax
For Tax Years 2003-05

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Utility Receipts Tax—Equipment.

Authority: IC § 6-2.3-2-1; IC § 6-2.3-3-10; IC § 6-8.1-5-1.

Taxpayer protests the imposition of utility receipts tax on receipts from its sale of certain equipment.

II. Tax Administration—Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of a ten (10) percent negligence penalty.

STATEMENT OF FACTS

Taxpayer provides wireless telecommunications services in Indiana. Taxpayer also sells handsets, wireless cards, and handset accessories along with these services. After an audit, the Indiana Department of Revenue ("Department") assessed additional Utility Receipts Tax ("URT"), penalties, and interest for the tax years 2003, 2004, and 2005. The Department found that Taxpayer had failed to include receipts from certain equipment sales as gross receipts subject to the URT. Taxpayer protested this assessment. An administrative hearing was held, and this Letter of Findings results.

I. Utility Receipts Tax—Equipment.

DISCUSSION

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

On initial assessment, the Department determined that Taxpayer had failed to include receipts from certain equipment sales as gross receipts subject to the URT.

The URT is imposed by IC § 6-2.3-2-1, as follows:

An income tax, known as the utility receipts tax, is imposed upon the receipt of:

- (1) the entire taxable gross receipts of a taxpayer that is a resident or a domiciliary of Indiana; and
- (2) the taxable gross receipts derived from activities or businesses or any other source within Indiana by a taxpayer that is not a resident or a domiciliary of Indiana.

IC § 6-2.3-3-10 provides:

Gross receipts include receipts received for installation, maintenance, repair, equipment, or leasing services provided to a commercial or domestic consumer that are directly related to the **delivery of utility services** to the commercial or domestic consumer or the removal of equipment from a commercial or domestic consumer upon the termination of service. **(Emphasis added).**

Accordingly, taxable gross receipts would include receipts received for providing equipment that directly pertains to the Taxpayer's delivery of the utility service.

Taxpayer asserts that its sales of cell phones, mobile broadband cards, and phone accessories are not the type of equipment sales that are subject to the URT under IC § 6-2.3-3-10. Taxpayer has provided sufficient documentation to establish that its equipment sales of cell phones, mobile broadband cards, and phone accessories do not "directly relate to the delivery of utility services." Since the cell phones, mobile broadband cards, and phone accessories are not equipment that relates to the Taxpayer's delivery of the service, the receipts received from the sale of such equipment are not subject to the URT.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration—Negligence Penalty.

DISCUSSION

The Department issued proposed assessments and ten (10) percent negligence penalties for the tax years in question. Taxpayer protests the imposition of the penalties. The Department refers to IC § 6-8.1-10-2.1(a)(3), which provides, "if a person . . . incurs, upon examination by the department, a deficiency that is due to negligence . . . the person is subject to a penalty.

The Department may waive a negligence penalty as provided in 45 IAC 15-11-2(c), as follows:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, since Taxpayer has established that it does not owe the proposed assessments as discussed in Issue I, Taxpayer has affirmatively established that there was not a failure to pay deficiencies and accordingly that it exercised ordinary business care, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is sustained.

AB/WL/DK-September 24, 2007